

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Randy Kennedy d/b/a R K Construction
& Demolition
Slater, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ-03

TO: Randy Kennedy
R K Construction & Demolition
P.O. Box 133
Slater, Iowa 50244

I. SUMMARY

This administrative consent order is entered into between Randy Kennedy d/b/a R K Construction & Demolition and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESIAP) violations for a demolition project at the Farrens Building in Bedford, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Marion Burnside
Iowa Department of Natural Resources
7900 Flickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

The DNR has jurisdiction to issue this administrative consent order, pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits

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issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10.

III. STATEMENT OF FACTS

1. Randy Kennedy d/b/a R K Construction & Demolition was hired by the City of Bedford to demolish the Farrens Building located at 321 Main Street in Bedford, Iowa. The Farrens Building was an old commercial building.

2. On April 5, 2007, the DNR received a complaint regarding the demolition of the Farrens Building.

3. On April 6, 2007, Marion Burnside, asbestos NESHAP coordinator for the DNR, conducted an inspection at the facility. When Mr. Burnside arrived at the site, the building had been partially demolished. Mr. Burnside observed floor tile that had been subject to sanding, grinding, or abrading. He observed dust blowing from the demolition site. Kenny Spencer, Maintenance Coordinator for the City of Bedford, and Randy Kennedy, R K Construction & Demolition, were present at the time of the inspection and informed Mr. Burnside that the thorough inspection for asbestos had not been conducted prior to the demolition. Mr. Burnside told these individuals to hire a licensed inspector to have the demolition debris and building sampled for asbestos. Mr. Burnside further explained to Mr. Spencer and Mr. Kennedy that if asbestos was found to be present, an asbestos abatement contractor would be required for the project. Mr. Burnside informed Mr. Spencer and Mr. Kennedy if asbestos was present in the debris and building, the material would have to go to that landfill as asbestos containing waste material. Mr. Burnside collected two samples of the suspect floor tile and took pictures of the site. On behalf of the City, Mr. Spencer signed a statement acknowledging the presence of suspect material. The statement stated that if the material was determined to be asbestos containing material that an asbestos abatement contractor would have to be retained and the demolition debris would have to be disposed of as asbestos containing waste material.

4. On April 19, 2007, Mr. Burnside submitted the samples he collected on April 6, 2007, to the University of Iowa Hygienic Laboratory for asbestos content analysis. On May 1, 2007, the DNR received the analytical results of the samples. However, due to a typographical error in the report, the DNR returned the report to the Hygienic Laboratory and requested correction of the error. On May 9, 2007, the DNR received the analytical results of the samples. The samples contained regulated amounts of asbestos – one sample contained 3.6% Chrysotile asbestos and the other sample contained 1.8% Chrysotile asbestos.

5. On May 21, 2007, the DNR issued a Notice of Violation letter to R K Construction & Demolition for several asbestos NESHAP violations. The letter cited the following violations: failure to thoroughly inspect; failure to notify; and failure to follow

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emission control procedures. A Notice of Violation letter with the same violations was sent to the City of Bedford.

6. Mr. Kennedy has prior knowledge of the asbestos regulations. On October 20, 2006, Mr. Kennedy and RK Construction & Demolition were issued a Notice of Violation letter. The letter cited the failure to submit a notification prior to a demolition project at a school in Atlantic, Iowa.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. Mr. Kennedy admitted there had been no inspection prior to the demolition. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. The facts in this case indicate that a notice was not submitted prior to the demolition. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that R K Construction & Demolition, as the operator, was not in compliance with these provisions when the demolition of the Farrens Building occurred.

5. 40 CFR section 61.145(c)(1) requires the removal of regulated asbestos containing material from the facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. The facts in this case indicate that the floor tile was not removed before demolition began. The demolition process caused the floor tile to become subject to sanding, grinding or abrading. The above facts indicate a violation of this provision.

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6. 40 CFR section 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. Mr. Burnside found dry asbestos containing material that had not been collected and contained. The above facts indicate a violation of this provision.

7. 40 CFR section 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the building demolition. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Randy Kennedy d/b/a R K Construction & Demolition agrees to do the following:

1. Randy Kennedy d/b/a R K Construction & Demolition shall pay a penalty of \$2,000.00 in accordance with the following payment plan:
\$400.00 due March 15, 2008; \$400.00 due June 15, 2008; and
\$400.00 due April 15, 2008; \$400.00 due July 15, 2008.
\$400.00 due May 15, 2008;
2. Randy Kennedy shall attend the 40 hour Contractor/Supervisor asbestos course within 180 days of the date from which the Director signs this administrative consent order; and
3. Randy Kennedy shall submit proof of course completion to Marion Burnside, DNR asbestos coordinator, within 10 days of completing the class.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with

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procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$2,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal can save significant time and money. R K Construction & Demolition gained an economic benefit by not properly removing the asbestos prior to the demolition. An economic benefit of \$100.00 is being assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by the statute. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to keep the building demolition debris adequately wet after demolition created an environmental hazard to the general public in Bedford. Failure to inspect and notify and improper removal of asbestos threaten the integrity of the asbestos NESHAP program. Therefore, \$1,100.00 is assessed for this factor.

c. Culpability. Mr. Kennedy d/b/a R K Construction & Demolition has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. Additionally, Mr. Kennedy had been issued a previous Notice of Violation letter for a notification violation. Based on the above facts, \$800.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

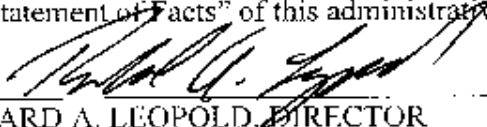
This administrative consent order is entered into knowingly by and with the consent of Randy Kennedy d/b/a R K Construction & Demolition. For that reason, Randy Kennedy d/b/a R K Construction & Demolition waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B:146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this


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administrative consent order but which may arise from the facts summarized in Section
"II. Statement of Facts" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
March, 2008



Randy Kennedy d/b/a R K Construction & Demolition

Dated this 4th day of
March, 2008

Barb Stock (No asbestos file number); Kelli Book; Marion Burnside; EPA; VII.C.4